HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. Lodging No. 555/2003

Smt. Partima Devi and other

vs

State of Uttaranchal and another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 04.12.2003

Initial of Judge

In the High Court of Uttaranchal at Nainital

Court No.6

Lodging No. 555 of 2003

Smt. Partima Devi and other ……Petitioners

Vs.

State of Uttaranchal & anothers …...… Respondents

Date of Judgment :- 04.12.2003

Hon'ble Rajesh Tandon, J.

Heard Sri Gopal Narain learned counsel for the petitioner and learned Standing counsel for the State.

By the present Writ Petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents no. 2 to 4 to give the appointment to the petitioner no.2 under the Dying in Harness Rule.

Brief facts giving rise to the present writ petition are that the husband of the petitioner no.1 and father of the petitioner no.2 late Sri Narayan Singh Pawar was employed as Beldar under the employment of respondents since long time but his services was not regularized, then he raised and Industrial Dispute alongwith other workman claiming regularization which was referred to the labout court Dehradun.

The petitioner has stated that the labour court Dehradun after hearing the parties regularized the services of the petitioner with all benefits of regular employee w.e.f. 1.10.1988 by its award dated 28.3.1995. The respondents challenged the award in writ petition no. 12331 of 1996 before Allahabad High Court and the same was also dismissed by judgment dated 13.2.1998. The respondents filed the special leave petition before the Hon'ble Supreme Court challenged the award dated 28.3.1995and judgment dated 13.2.1998 in Civil Appeal no. 6377 of 1999 which was dismissed by the Apex Court on 29.10.1999.

After finalization of the aforesaid proceedings in favour of the deceased Narayan Singh Pawar died on 10.9.2001. Thereafter the petitioner no.1 moved an application to the respondent seeking the appointment of her son petitioner no.2 under Dying in Harness Rule.

The grievance of the petitioner is that the respondents did not issue appointment letter or any information inspite of several reminders. Rule 5 of Dying in Harness is quoted below:

"Rule-5. [Recruitment of a member of a family of the deceased] [Subs. By Noti. 6/XII/73-Ka-2-99, dated 20th January, 1999, published in U.P. Gazette (Extra.) Part-4 section (Ka) dated 20th January 1999].

(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government or a State Government shall, on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualifications prescribed for the post.

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death ofhte Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for

employment causes under hardship is any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner."

(2) As far as possible , such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death.

(3) [Ins.by Noti. No.6/12-73-Ka-2-2001, dated 12th October, 2001 [Vide U.P. Recruitment of Dependants of Government Servants Dying in Harness(Sixth Amendment) Rules. 2001(w.e.f 12-10-2001] Each appointment under Sub-rule (1) should be under the condition that the person appointment under sub-rule (1) shall upkeep those other family members of the deceased Government Servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death.

It has been held by the Apex Court Smt. Sushma Gosain and others Vs. Union of India and others AIR 1989 SC 1976 that the appointment on compassionate appointment ground is made to enable the family to tide over the sudden order. The observations are quoted under:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. It there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

Relying upon the judgment of Smt. Sushma Gosain and others Vs. Union of India and other AIR 1989 SC 1976 it has been held in Manish

Mishra VS. State of U.P. 1998(3) ESC 1877(All) the court has directed to create supernumerary post. The observation are quoted below;-

> *"The core question is whether mandamus can be issued commanding the respondents to create supernumerary Class III post. The appointment on compassionate ground is made to enable the family to tide over the sudden crises on the death of the deceased employee who was a bread earner in the family. If the post is not avaibable a supernumerary post it to be created . In Smt.Sushma Gosain and others Vs. Union of India and others AIR 1989 SC 1976, wherein the widow of the deceased employee made application for appointment on the death of her husband in the year 1982 but she was not given appointment for many years, the court directed that if there is no suitable post for appointment, supernumerary post be created to accommodate the applicant with the following observation:-*
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> *<u>Para-3</u> " We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."*
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> *<u>Para-4 "</u> In Smt. Phoolwati Vs Union of India and others. AIR 1991 SC 469, the direction was given by the Apex Court relying upon the decision of Smt. Sushma Gosain's case(supra0 for employing the applicant in that case on a suitable post commensurate with her educational qualification. The test, when class III or Class IV post or such other supernumerary post has to be created, was considered in Umesh Kumar Nagpal VS. State of Haryana and others,*

Judgment Today 1944(3) SC 525, wherein it was held that if the object of granting compassionate employment is to enable the family to tide over the sudden crisis, as a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any consideration is permissible. There are certain exceptions and one such exception is in favour of dependent of an employee dying in harness and leaving his family in penury and without any means of life. The posts in Classes III and IV are the lowest posts in non manual and manual categories and hence they alone can be offered on compassionate grounds;-

"In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a past for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

Para-5 "The Government has decided to create supernumerary Class IV post. The direction given by the Government Order dated 16-8-96 is not in contravention of the principle laid down by the Apex Court referred to in Umesh Kumar Nagpal's case (Supra)."

In Jagdish Prasad Vs. State of Bihar and another 1996 1 SCC 301, the Apex Court has interpreted the object of the Act. The observations are quoted below:-

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family be sudden demise of the earning member of the family."

As held by the Apex Court that Dying in Harness rule is an exception to the general employment and the object of the appointment being to give the employment to the family of the deceased in sudden and unexpected hardships.

It is well established that the appointment under the Dying in Harness Rule should not be delayed as the object of appointment under the Dying in Harness Rule is to give facilities to the family of the deceased and as such immediate steps should be taken in this regard.

The petitioner has already made an application on 15.9.2003 and no decision has yet taken place.

In view of the above, the respondents are directed to dispose of the application in accordance with Rule 5 of the Dying in Harness Rules preferably within a period of one month from the date of receipt of order of this court.

With these observations, the writ petition stands disposed of.

Dated 4.12.2003 **(Rajesh Tandon, J.)**
Rawat